

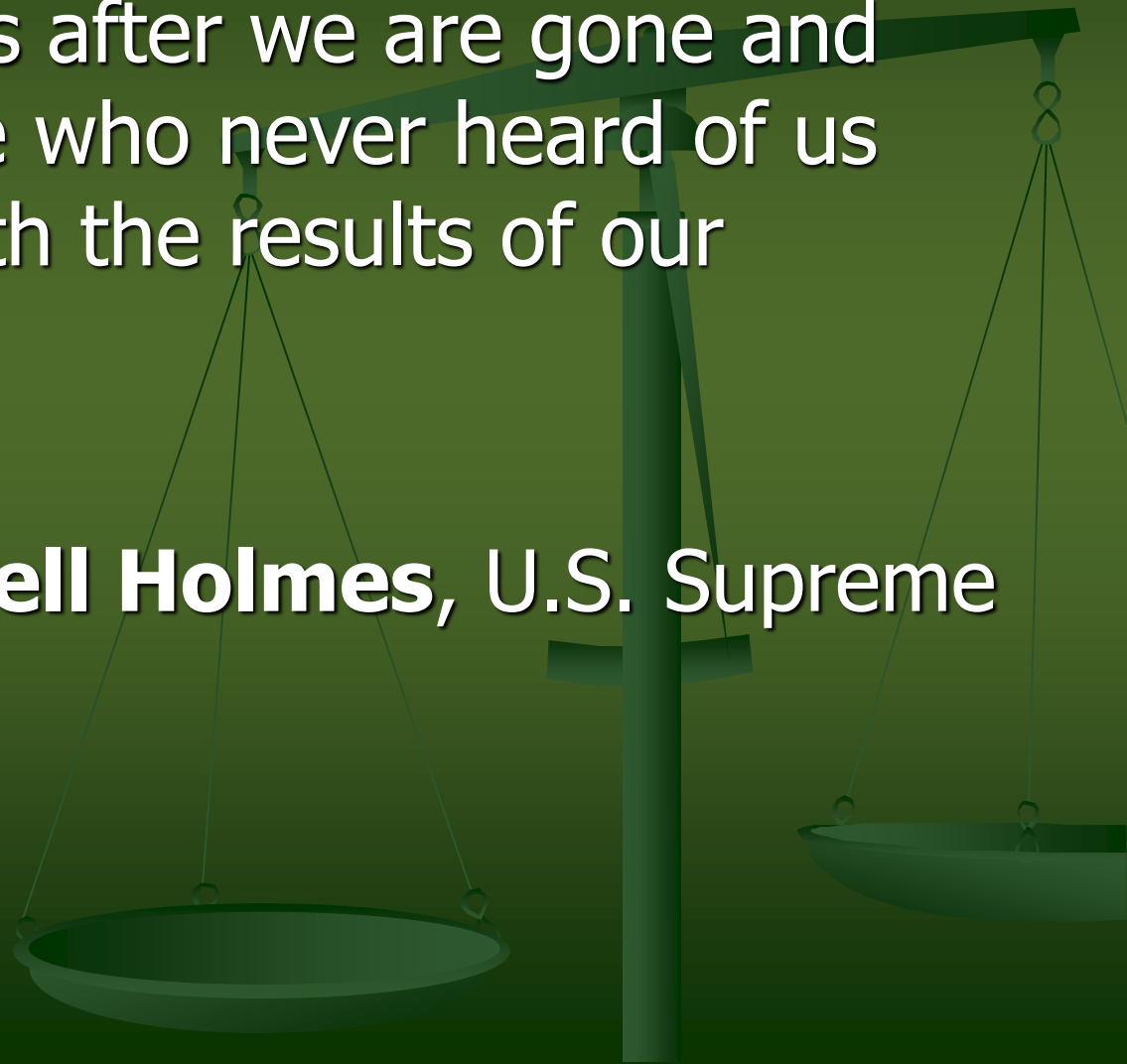


# Planning & Zoning in Connecticut

*A Woefully Inadequate Guide  
for West Hartford Boards  
and Commissions*

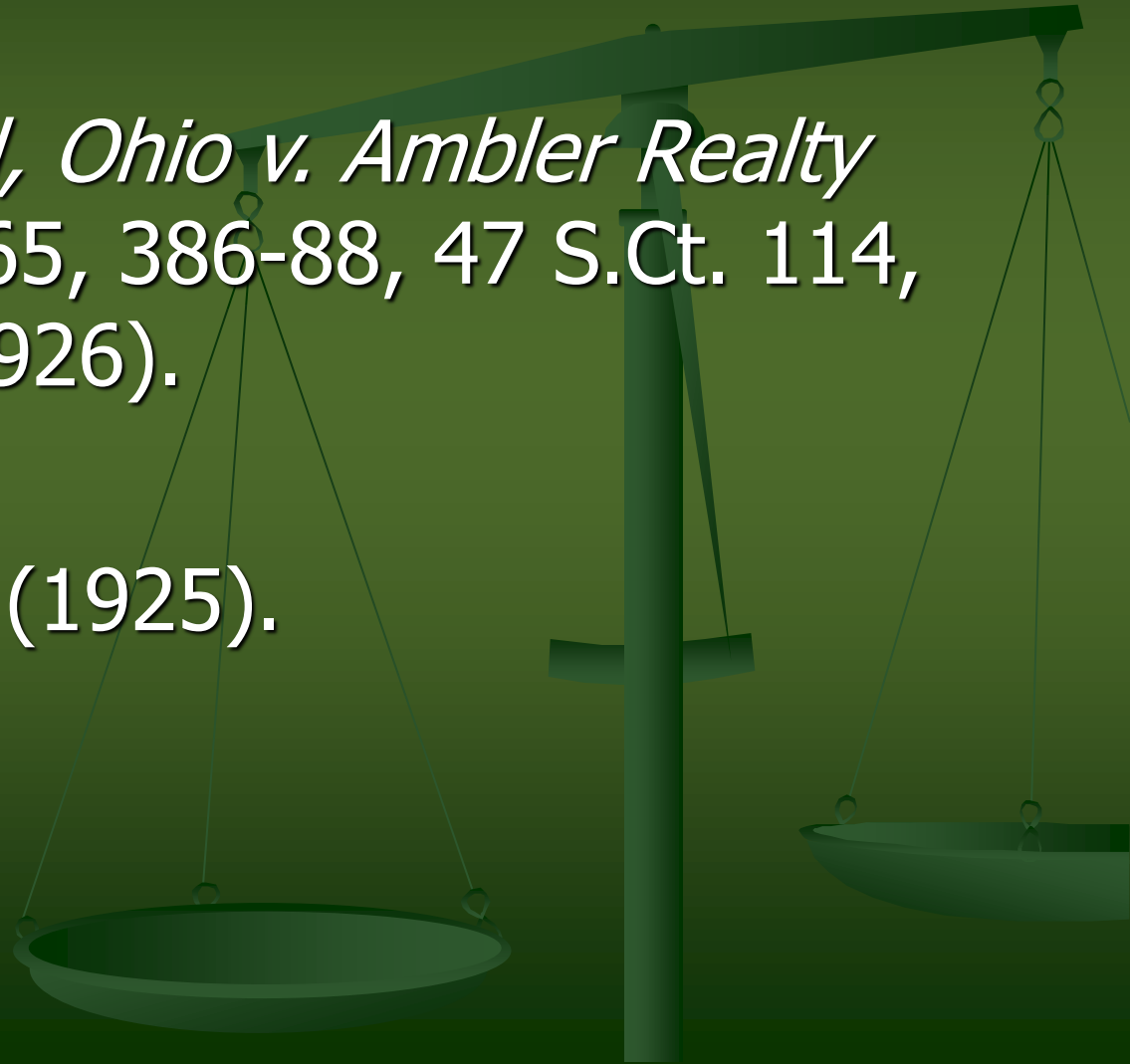
A hundred years after we are gone and forgotten, those who never heard of us will be living with the results of our actions.

- **Oliver Wendell Holmes**, U.S. Supreme Court justice



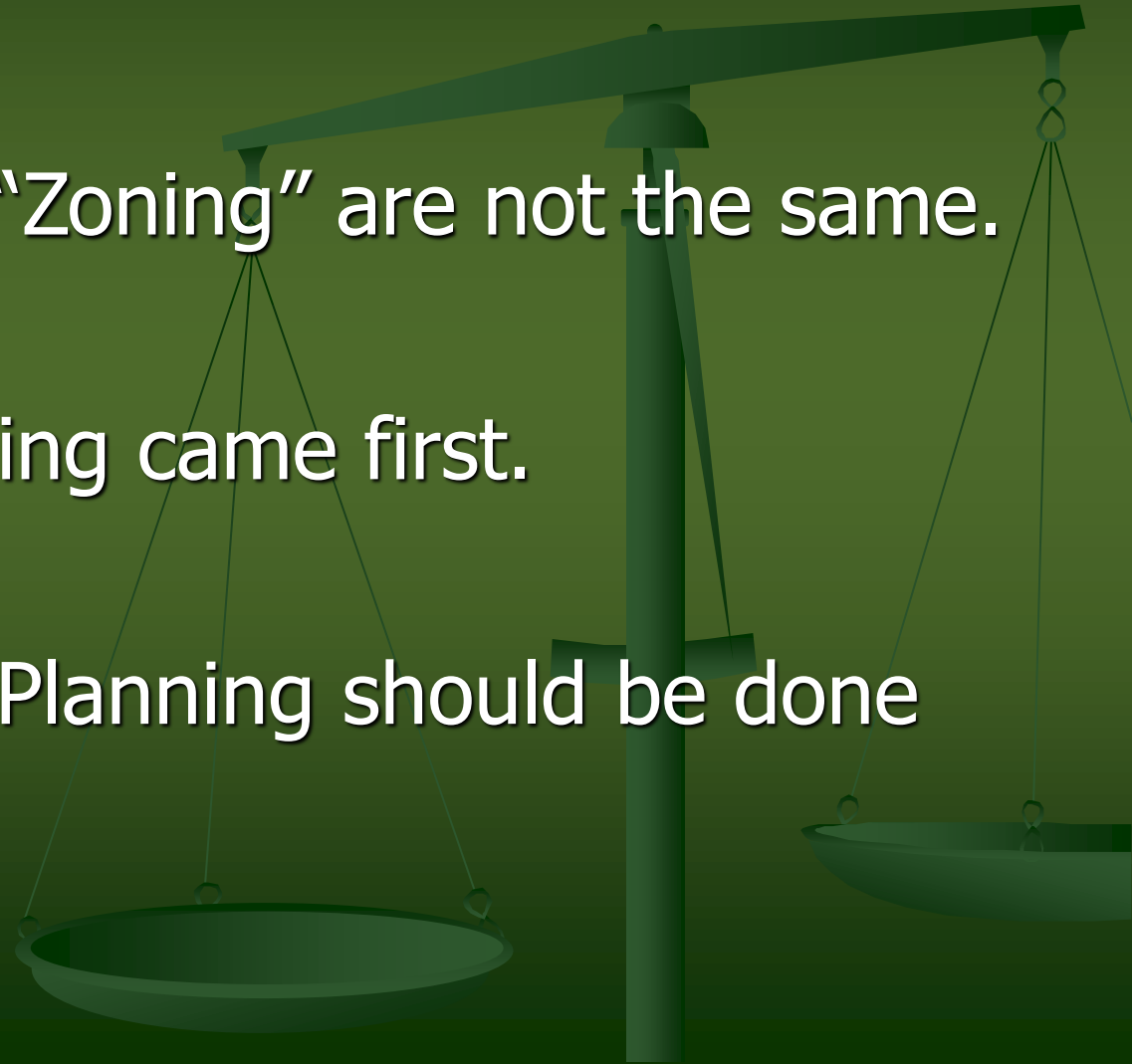
# The Legal Roots of Zoning

- *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 386-88, 47 S.Ct. 114, 71 L.Ed. 303 (1926).
- Special Act 469 (1925).



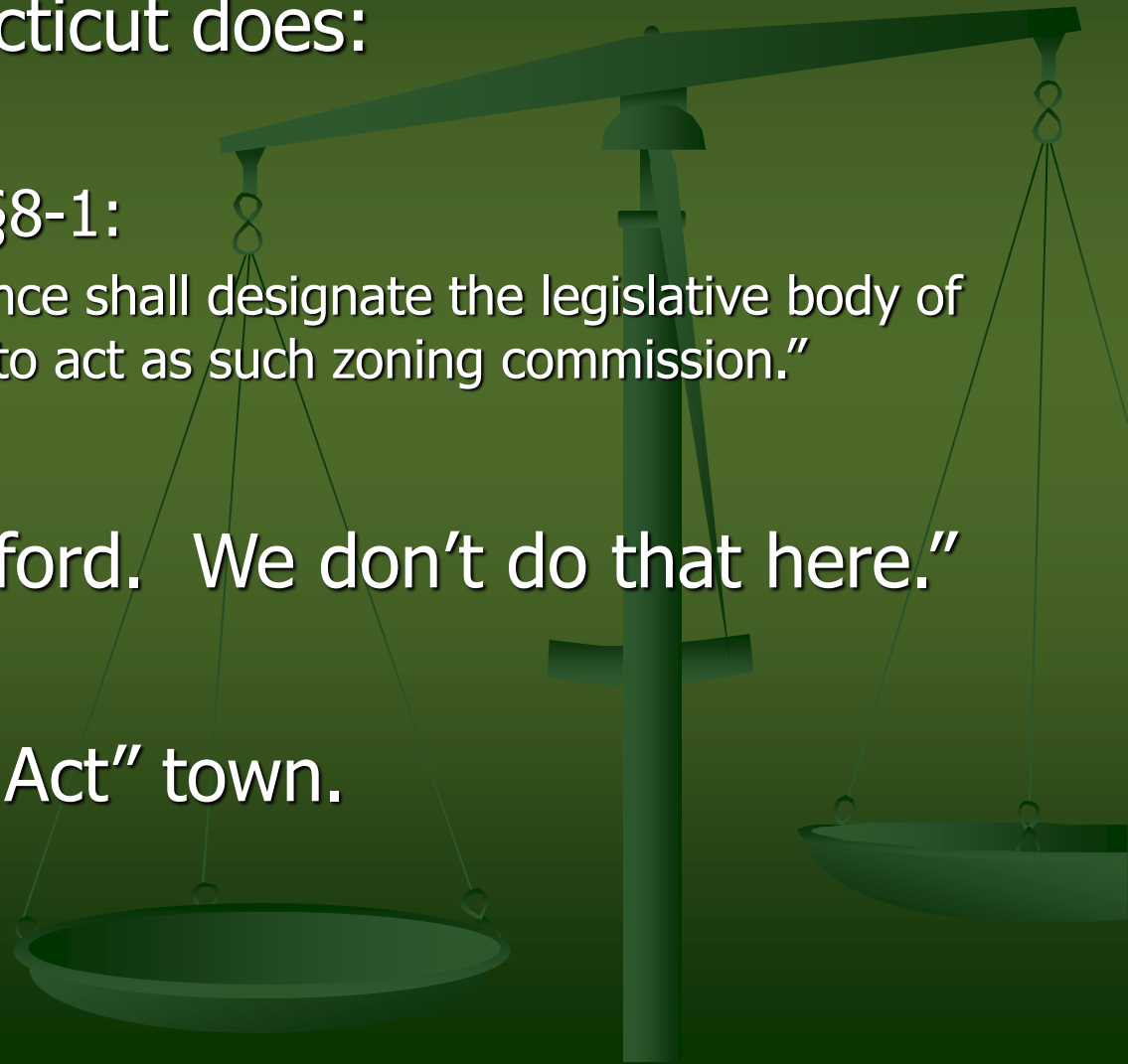
# Distinction between Zoning and Planning functions.

- “Planning” and “Zoning” are not the same.
- Historically, Zoning came first.
- Philosophically, Planning should be done *before* Zoning.



# Derivation of Zoning Authority

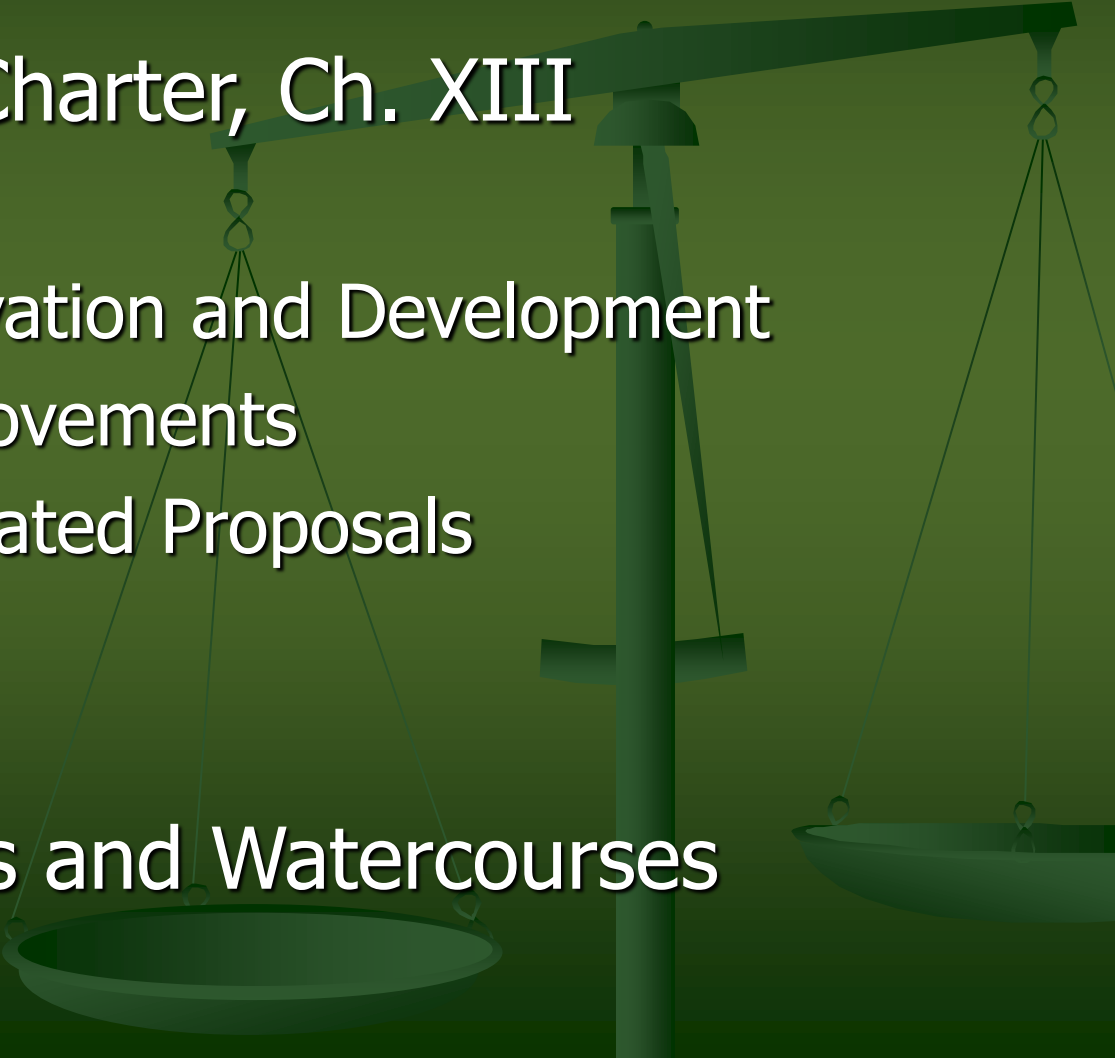
- What all of Connecticut does:
  - General Statutes §8-1:
    - "...no such ordinance shall designate the legislative body of such municipality to act as such zoning commission."
- "This is West Hartford. We don't do that here."
- We are a "Special Act" town.



What Is My Role In The  
Universe?

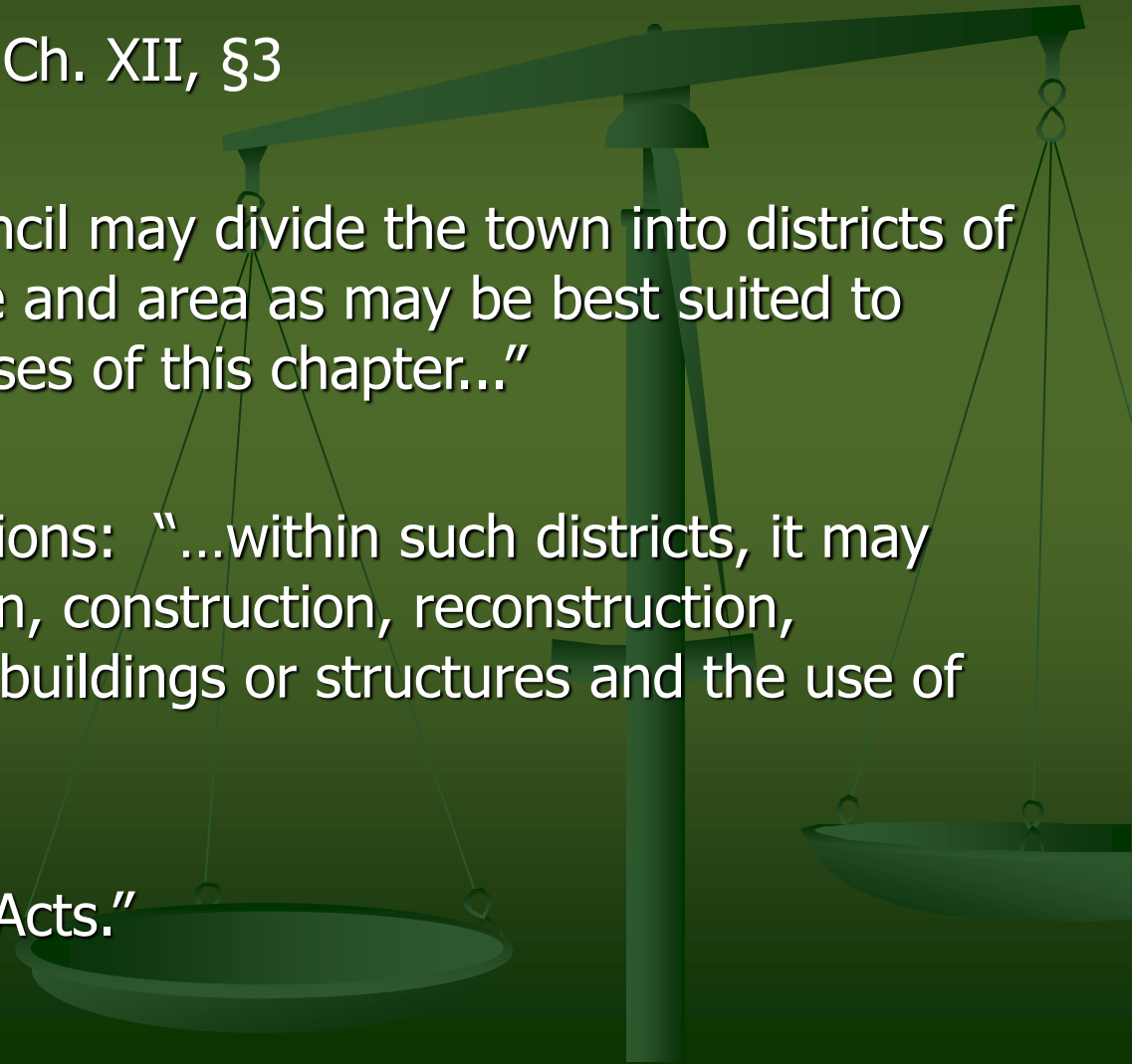


# Basic Planning Authority: TPZ

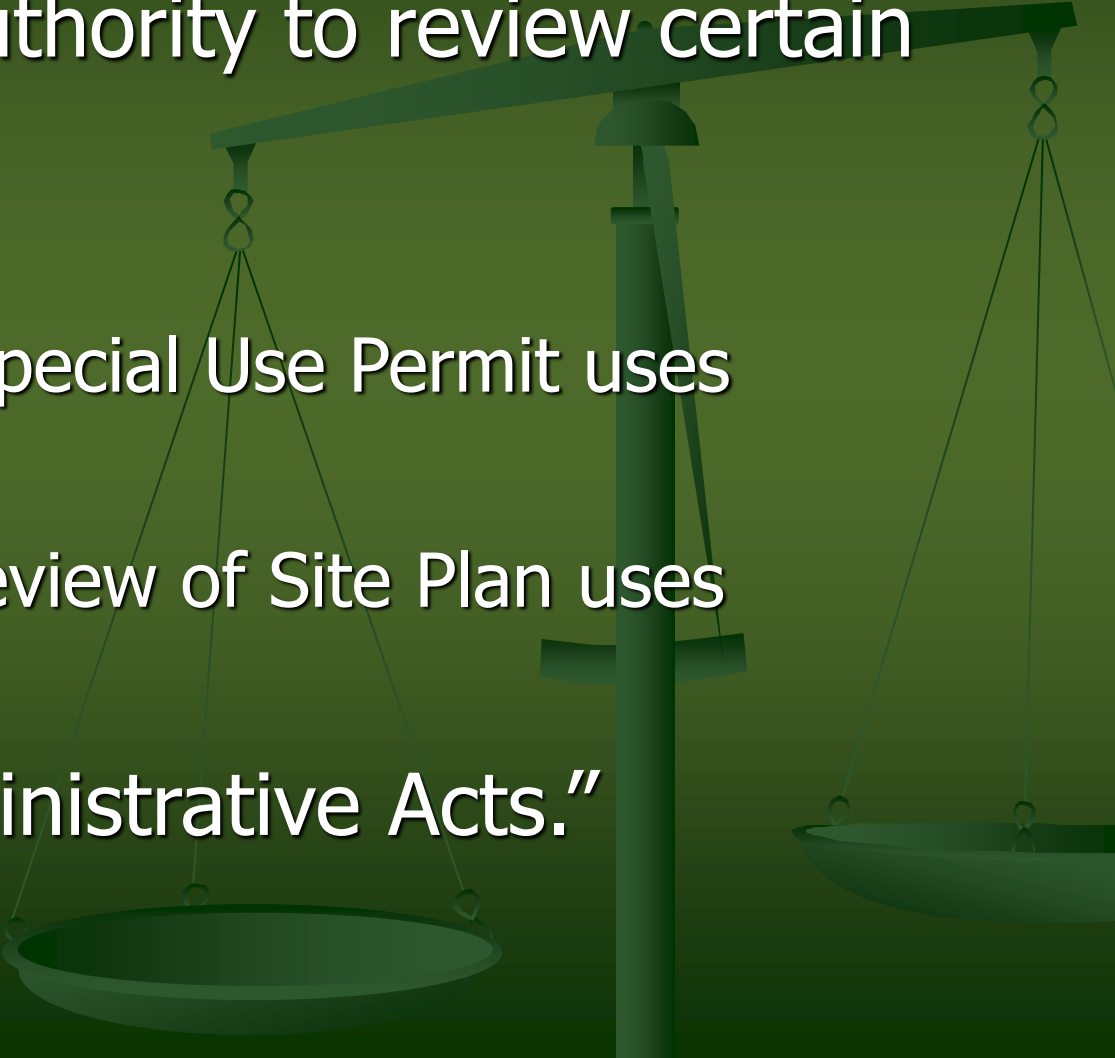
- West Hartford Charter, Ch. XIII
    - Plan of Conservation and Development
    - Municipal Improvements
    - Streets and Related Proposals
    - Subdivisions
  - Inland Wetlands and Watercourses
- 

# Basic Zoning Authority: Town Council

- West Hartford Charter, Ch. XII, §3
  - Districts: “The council may divide the town into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter...”
  - Ordinances/Regulations: “...within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land”
- These are “Legislative Acts.”



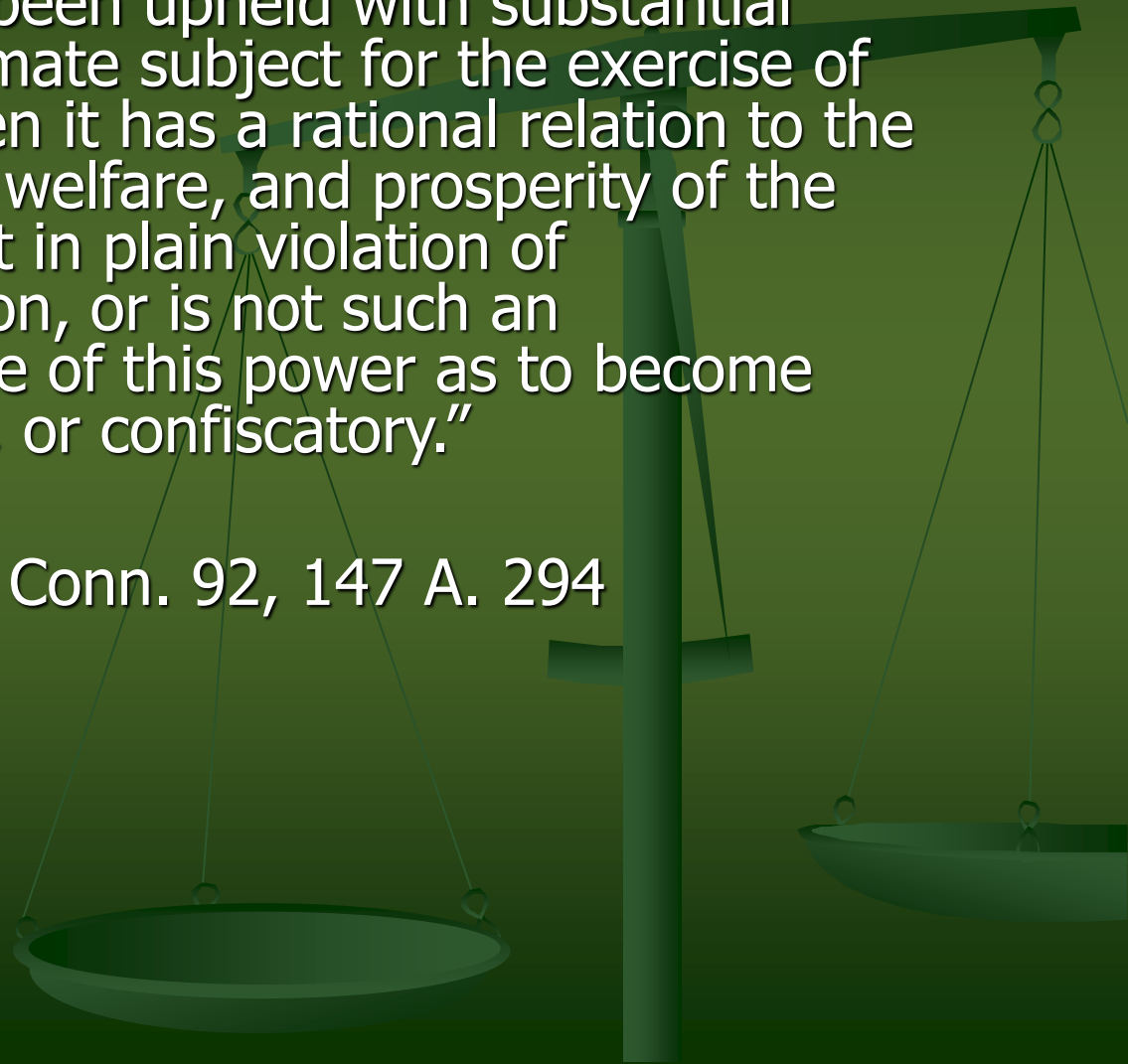
# Basic Zoning Authority: TPZ/Town Planner

- Delegation of authority to review certain uses:
    - TPZ review of Special Use Permit uses
    - Town Planner review of Site Plan uses
  - These Are “Administrative Acts.”
- 

# Principles Which Drive Zoning:

"Zoning legislation has been upheld with substantial uniformity as a legitimate subject for the exercise of the police power when it has a rational relation to the public health, safety, welfare, and prosperity of the community and is not in plain violation of constitutional provision, or is not such an unreasonable exercise of this power as to become arbitrary, destructive, or confiscatory."

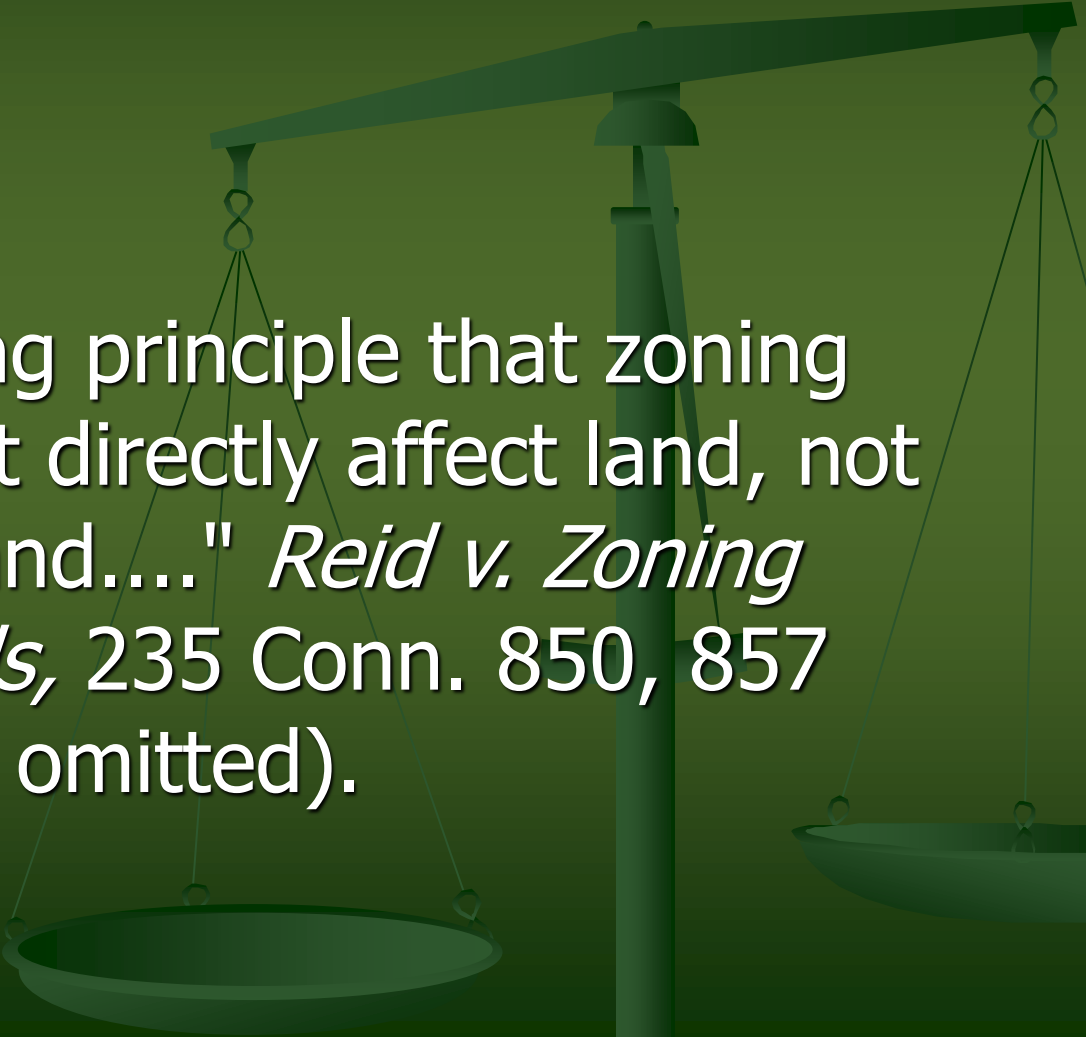
*State v. Hillman*, 110 Conn. 92, 147 A. 294 (1929).



# Implementing These Principles:

- "Use not user"

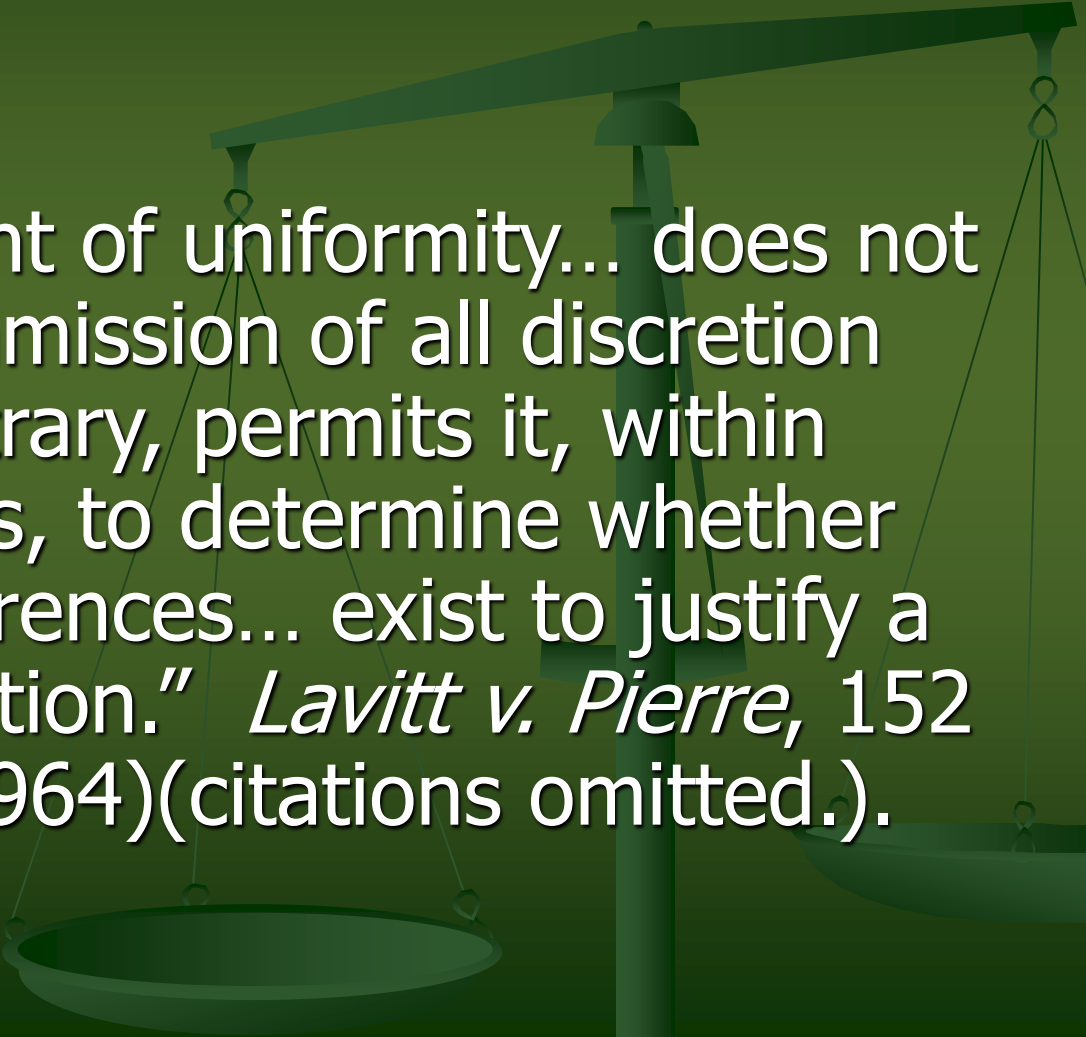
"The basic zoning principle that zoning regulations must directly affect land, not the owners of land...." *Reid v. Zoning Board of Appeals*, 235 Conn. 850, 857 (1996)(citations omitted).



# Implementing These Principals:

## ■ Uniformity:

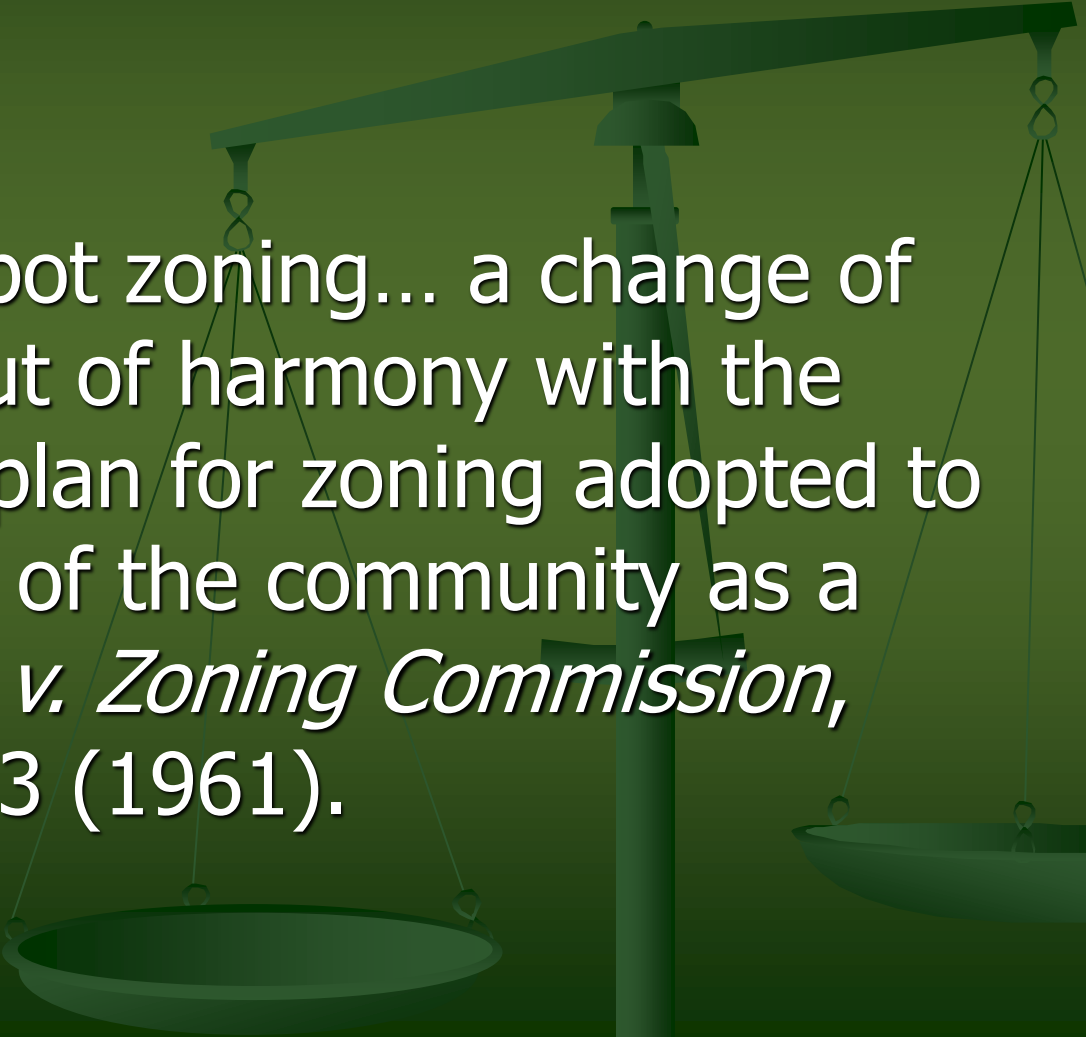
“The requirement of uniformity... does not deprive the commission of all discretion but, on the contrary, permits it, within reasonable limits, to determine whether substantial differences... exist to justify a zoning classification.” *Lavitt v. Pierre*, 152 Conn. 66, 75 (1964)(citations omitted.).



# Implementing These Principles:

- Spot Zoning

“To constitute spot zoning... a change of zone must be out of harmony with the comprehensive plan for zoning adopted to serve the needs of the community as a whole.” *DeMeo v. Zoning Commission*, 148 Conn. 68, 73 (1961).



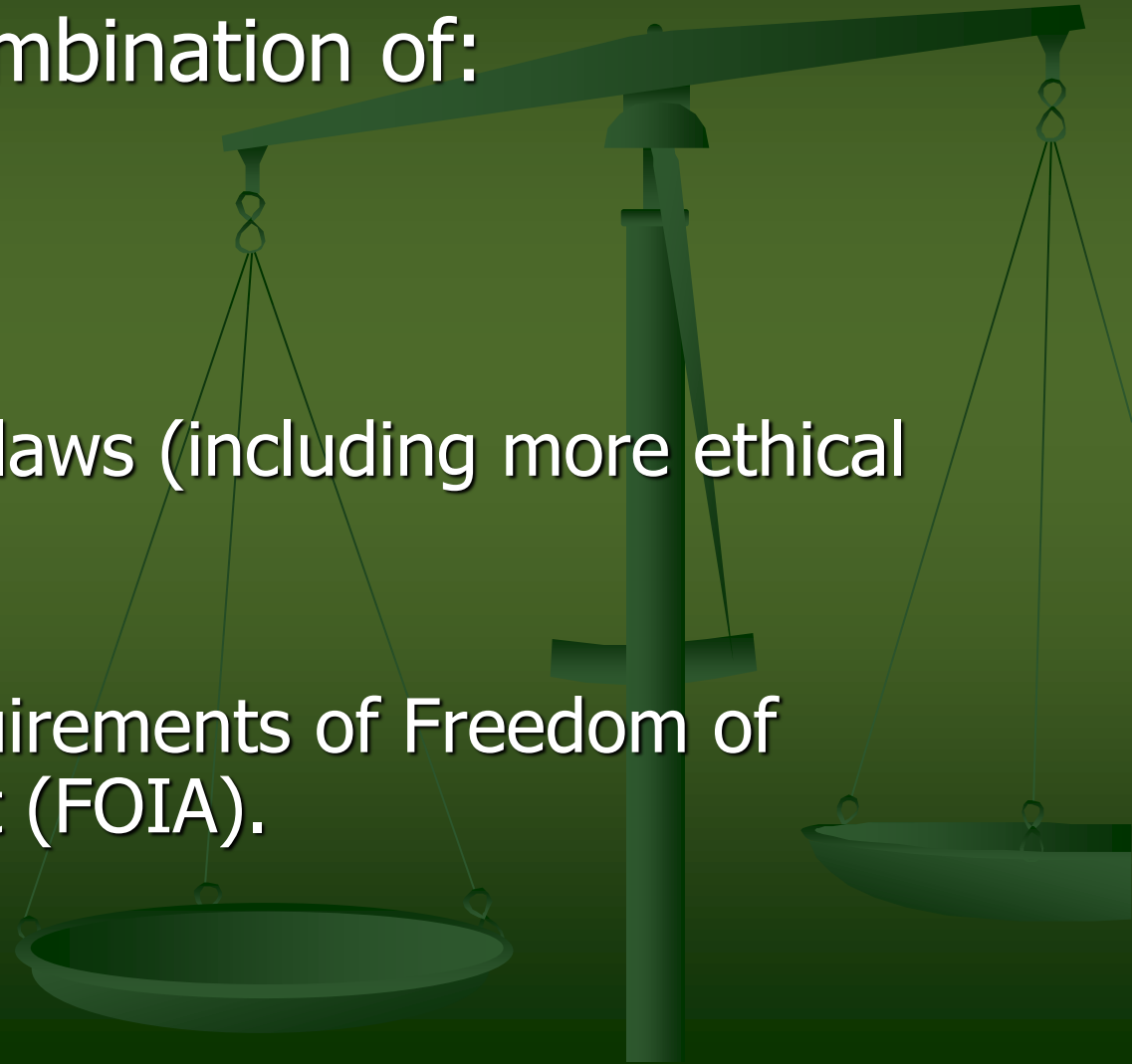
# Limits on Zoning Authority:

- Preemption
- Regulatory Takings
- Discrimination
- Nonconformities



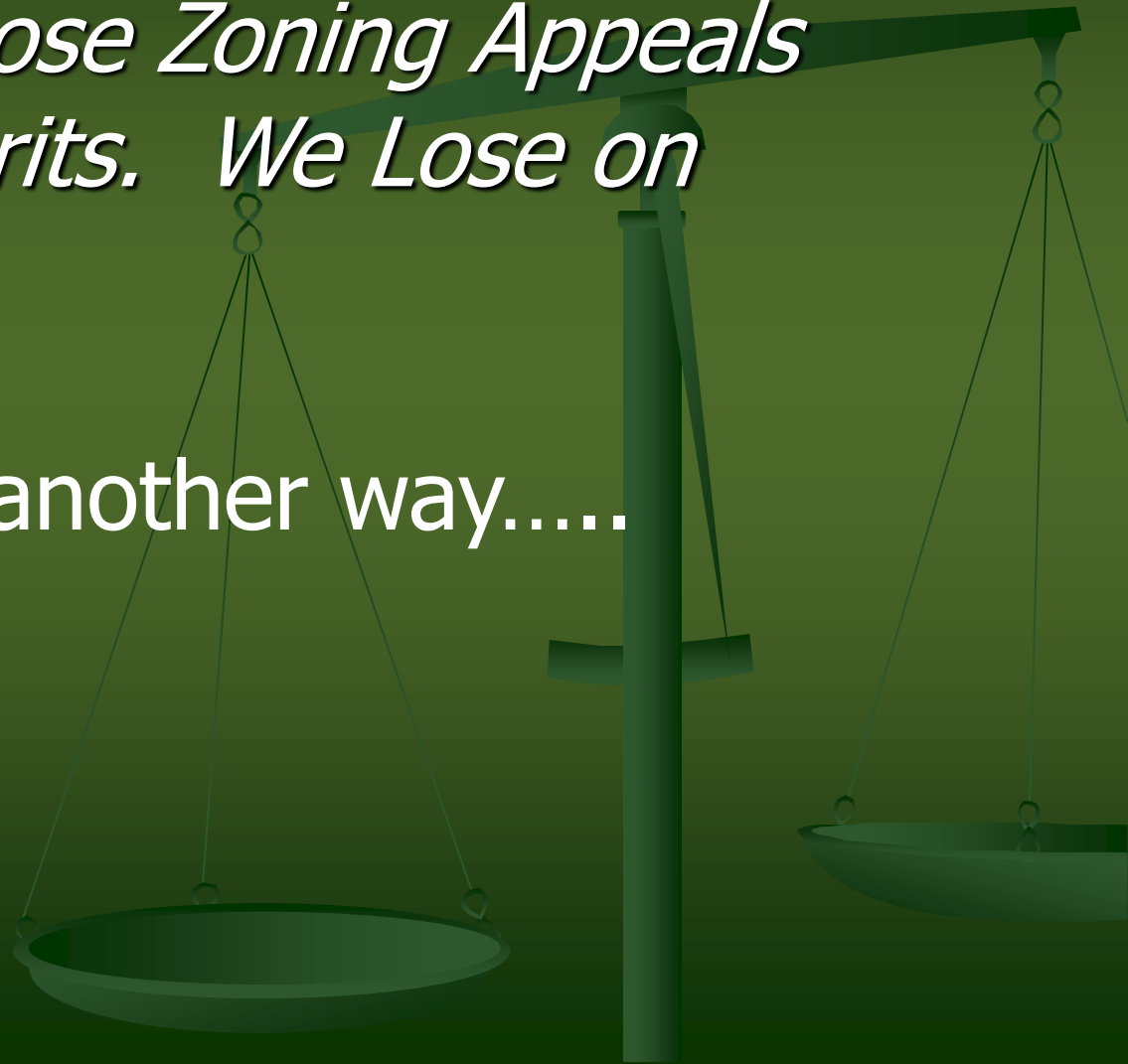
# Process

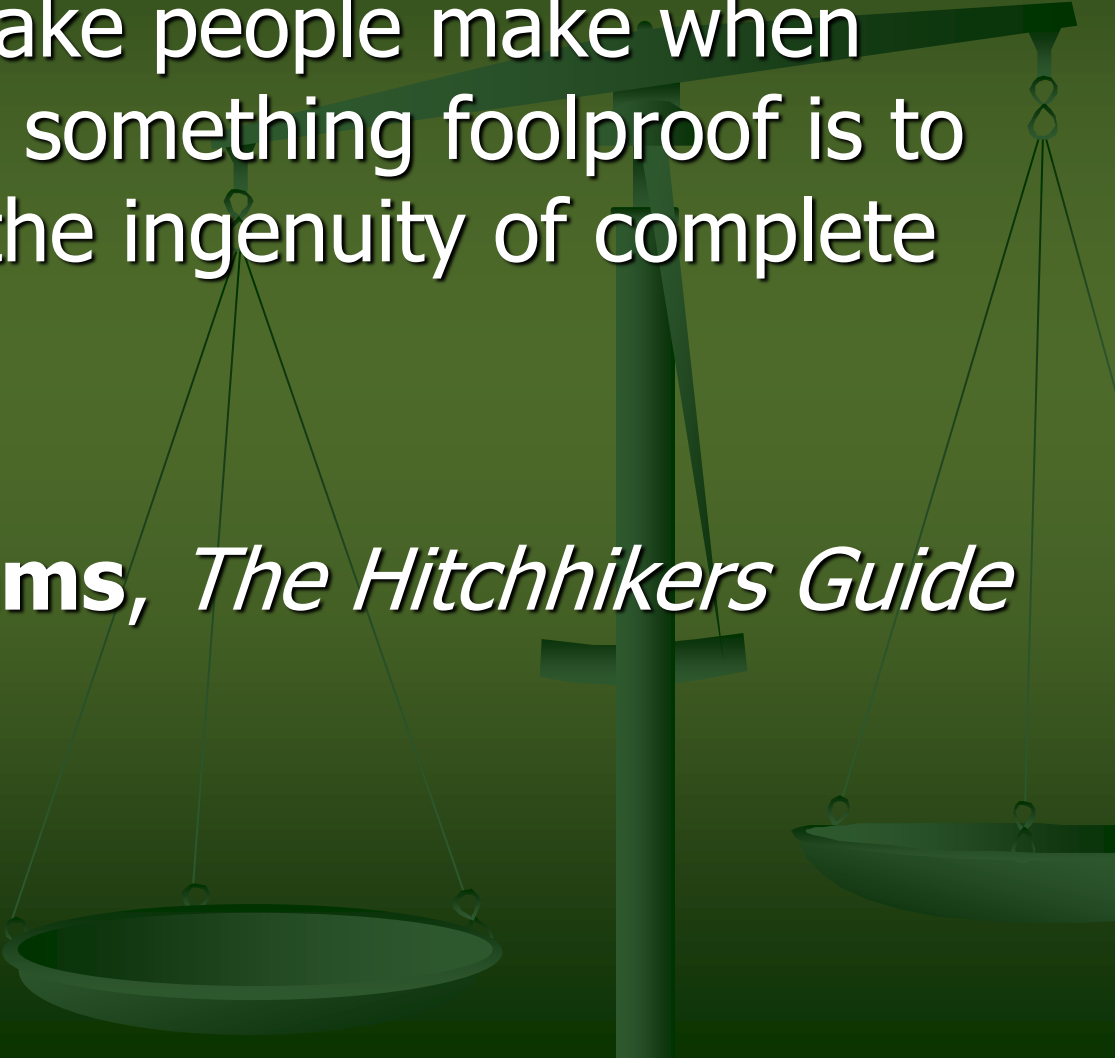
- Rules reflect combination of:
  - ethical rules
  - specific zoning laws (including more ethical rules)
  - procedural requirements of Freedom of Information Act (FOIA).



*We Rarely Lose Zoning Appeals  
on Their Merits. We Lose on  
Process.*

Or, put another way.....



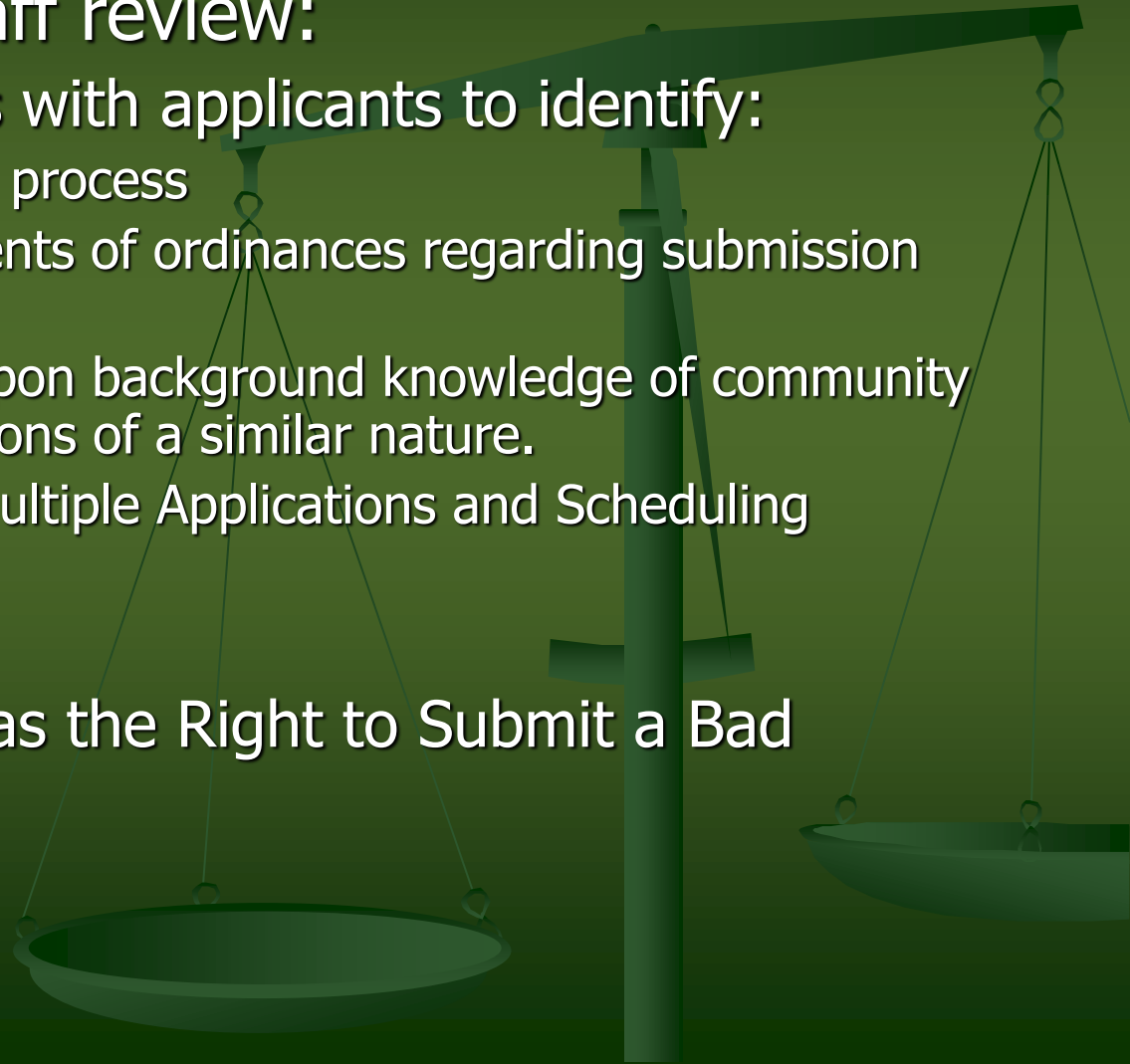


A common mistake people make when trying to design something foolproof is to underestimate the ingenuity of complete fools.

- **Douglas Adams**, *The Hitchhikers Guide to the Galaxy*

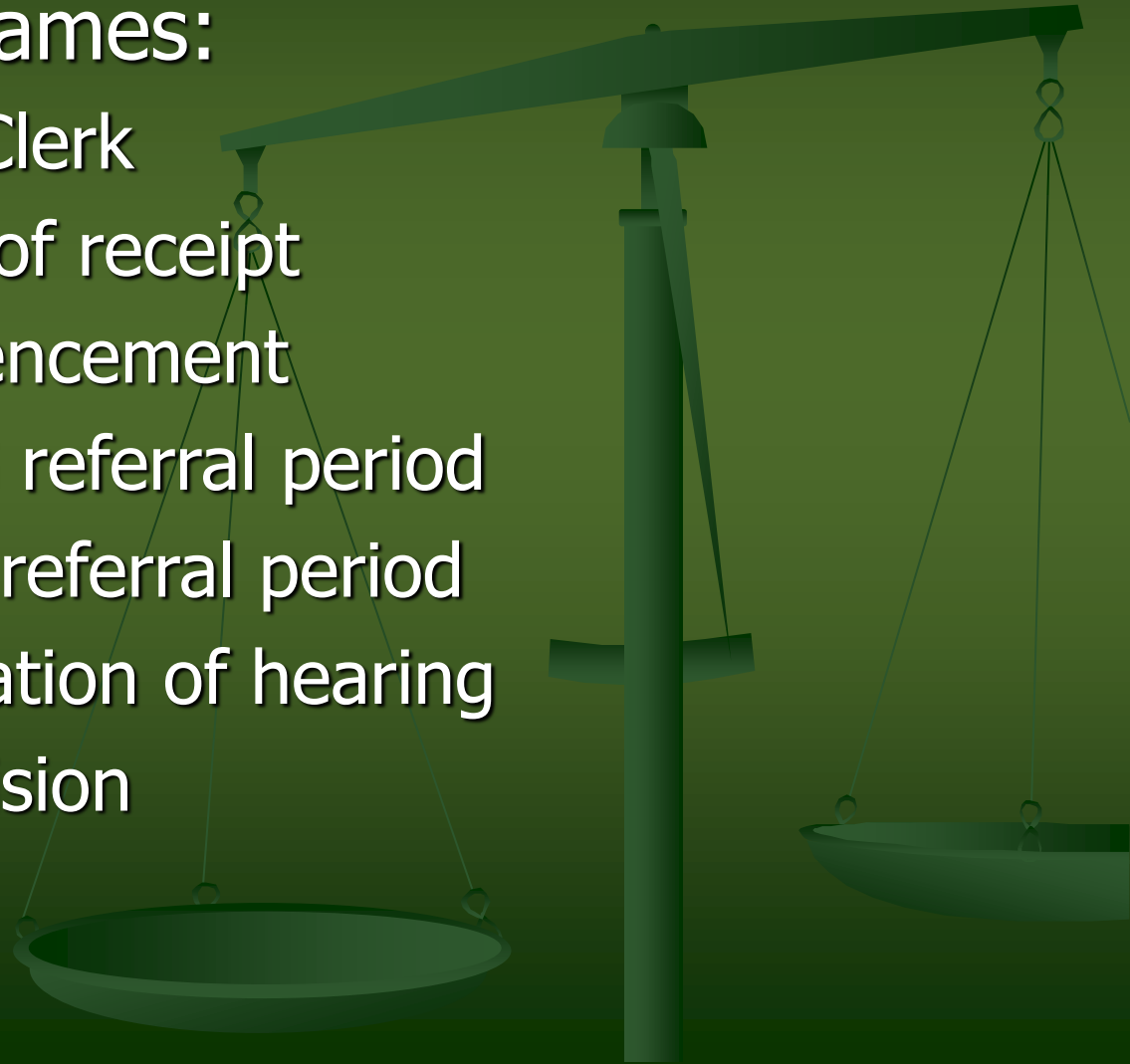
# Process: The Application

- Pre-application staff review:
  - Informal meetings with applicants to identify:
    - Proper application process
    - Specific requirements of ordinances regarding submission requirements.
    - Concerns based upon background knowledge of community and prior applications of a similar nature.
    - Process issues: Multiple Applications and Scheduling Coordination.
  - Every Applicant Has the Right to Submit a Bad Application.

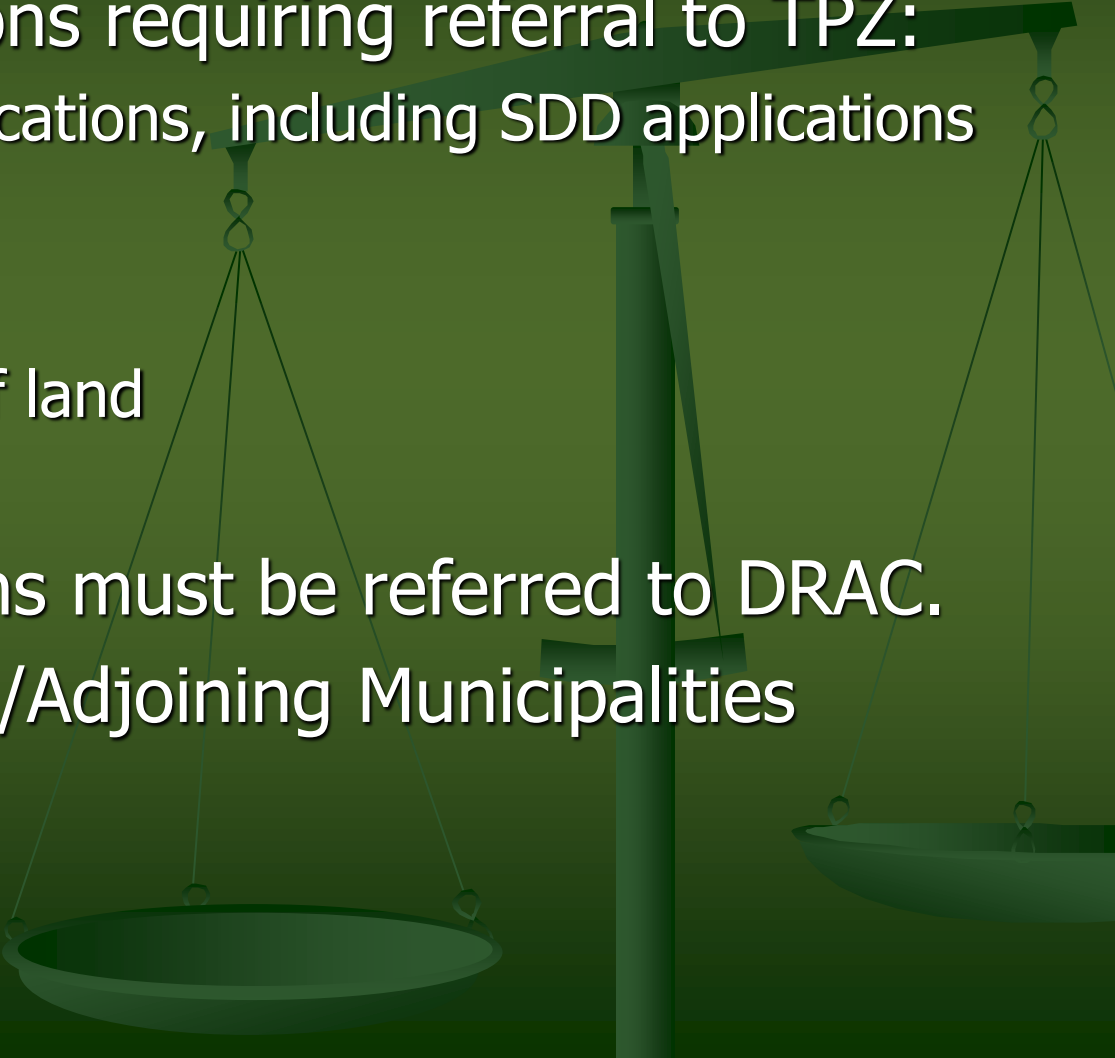


# The Application

- Juggling time frames:
  - Submission to Clerk
  - Statutory Date of receipt
  - Hearing commencement
  - 35-day CRCOG referral period
  - 30-60 Day TPZ referral period
  - No limit on duration of hearing
  - No limit on decision



# The Application

- Town Council actions requiring referral to TPZ:
    - Zone change applications, including SDD applications
    - Easements
    - Leases
    - Sales/purchases of land
    - Capital Budget
  - All SDD applications must be referred to DRAC.
  - Referral to CRCOG/Adjoining Municipalities
- 

# Pre-Hearing Procedure

- Notice of Hearing

- By Mail:

- Required for:

- Special Use Permit applications
      - Subdivision applications
      - TPZ approval of maps/plans for layout of streets, building lines, veranda lines, etc.
      - Variances/Special Exceptions
      - Participants in Registry



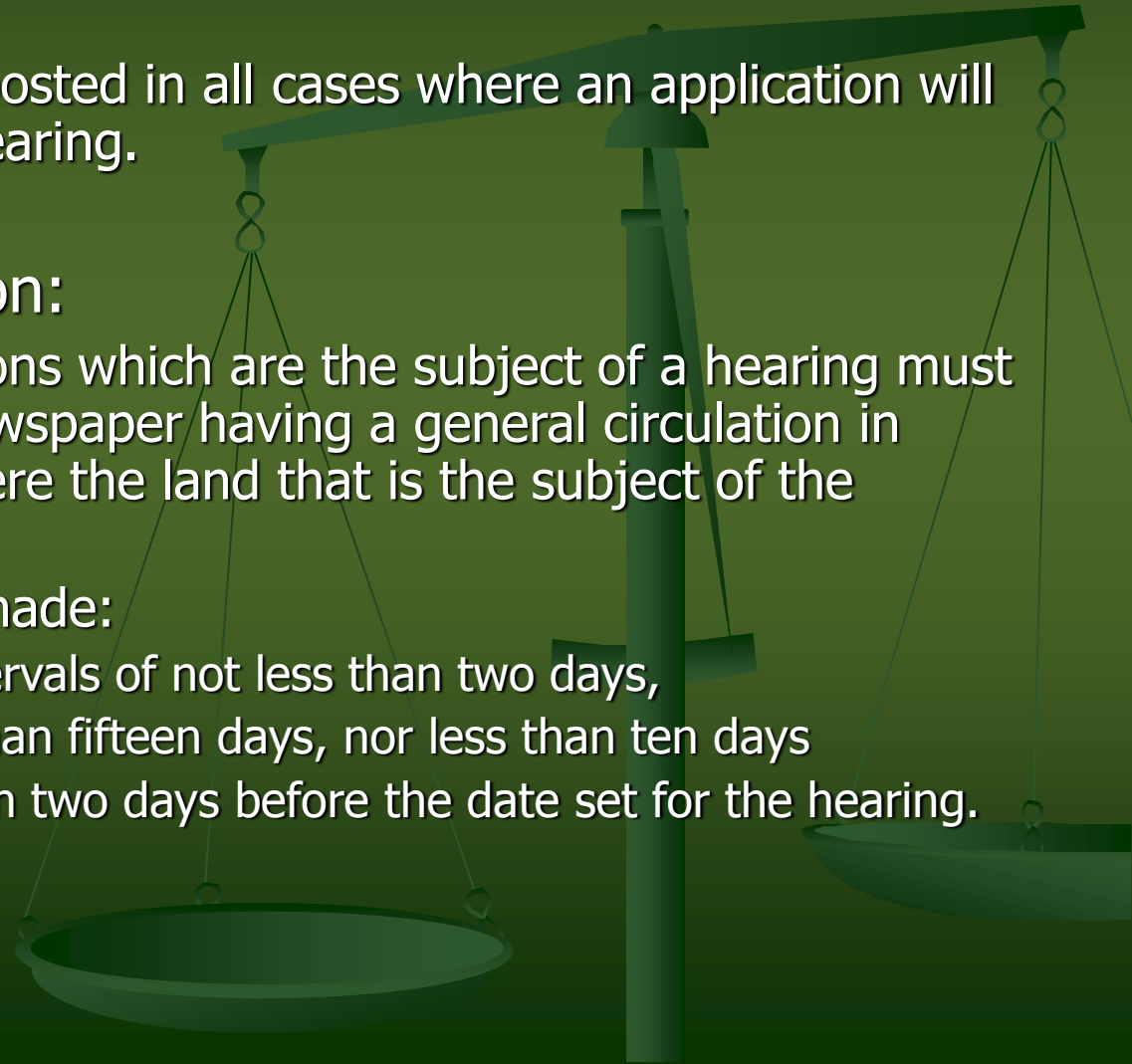
# Pre-Hearing Procedure, Cont'd

## ■ Sign

- Notice sign must be posted in all cases where an application will be the subject of a hearing.

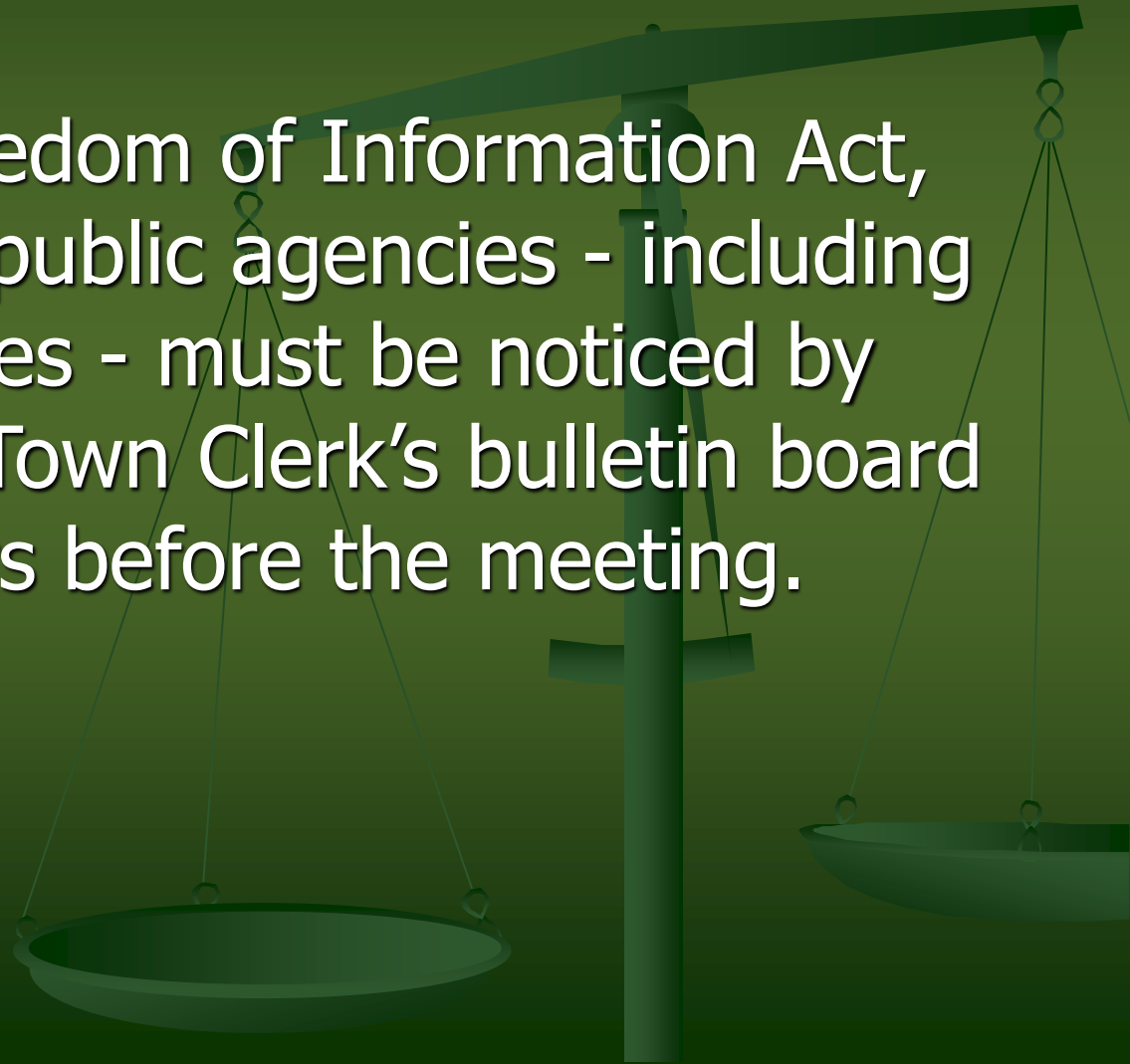
## ■ Newspaper Publication:

- Notice of all applications which are the subject of a hearing must be published "in a newspaper having a general circulation in such municipality where the land that is the subject of the hearing is located."
- Publication must be made:
  - at least twice at intervals of not less than two days,
  - the first not more than fifteen days, nor less than ten days
  - the last not less than two days before the date set for the hearing.



# Pre-Hearing Procedure, Cont'd

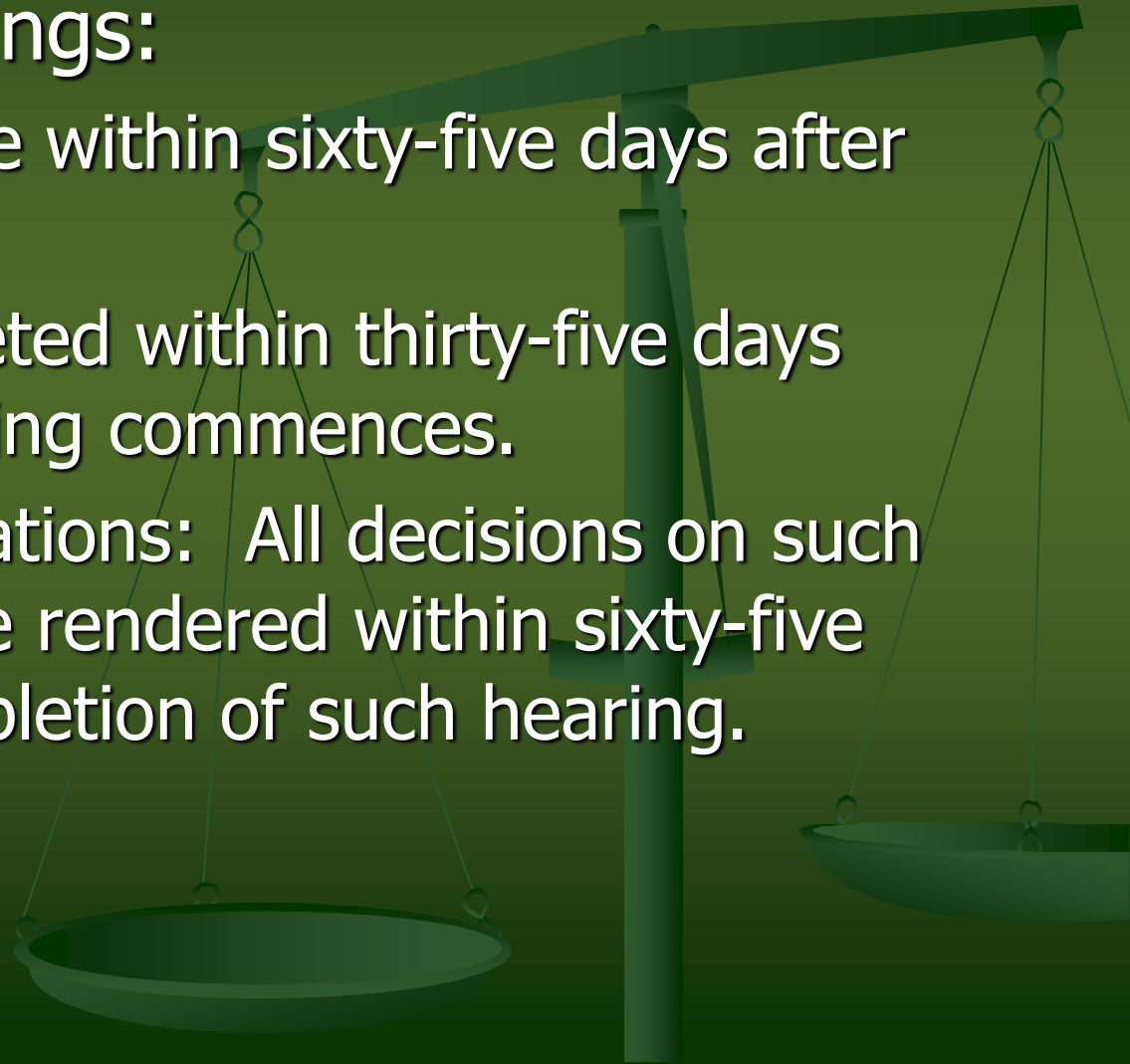
- Pursuant to Freedom of Information Act, all meetings of public agencies - including land use agencies - must be noticed by posting on the Town Clerk's bulletin board at least 24 hours before the meeting.



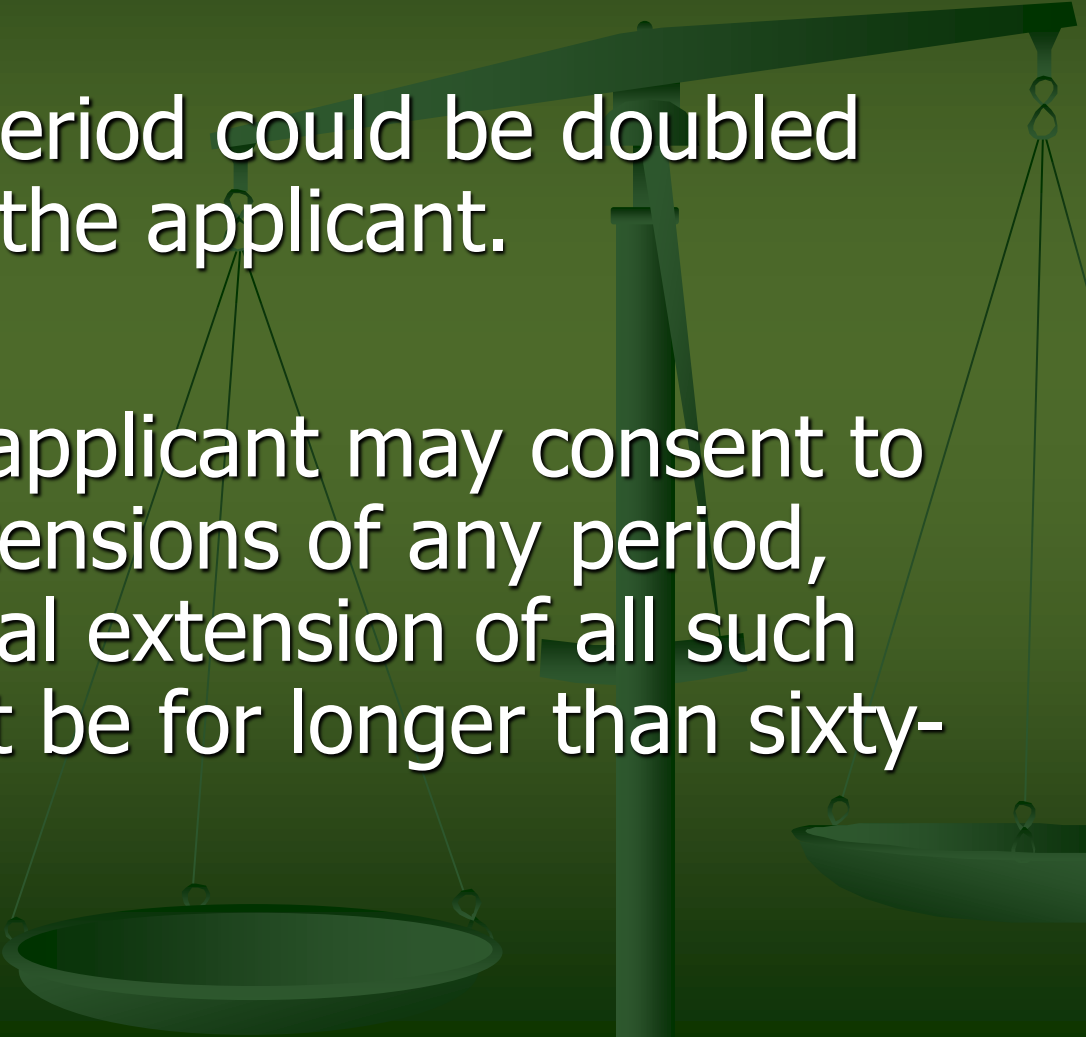
# Hearing Time Frames, Cont'd

## All TPZ/ZBA Hearings:

- Must commence within sixty-five days after receipt.
- Must be completed within thirty-five days after such hearing commences.
- All other applications: All decisions on such matters shall be rendered within sixty-five days after completion of such hearing.



# Extensions of Time

- Old rule: Each period could be doubled with consent of the applicant.
  - New rule: The applicant may consent to one or more extensions of any period, provided the total extension of all such periods shall not be for longer than sixty-five days.
- 

# Failure to Comply with Time Limits

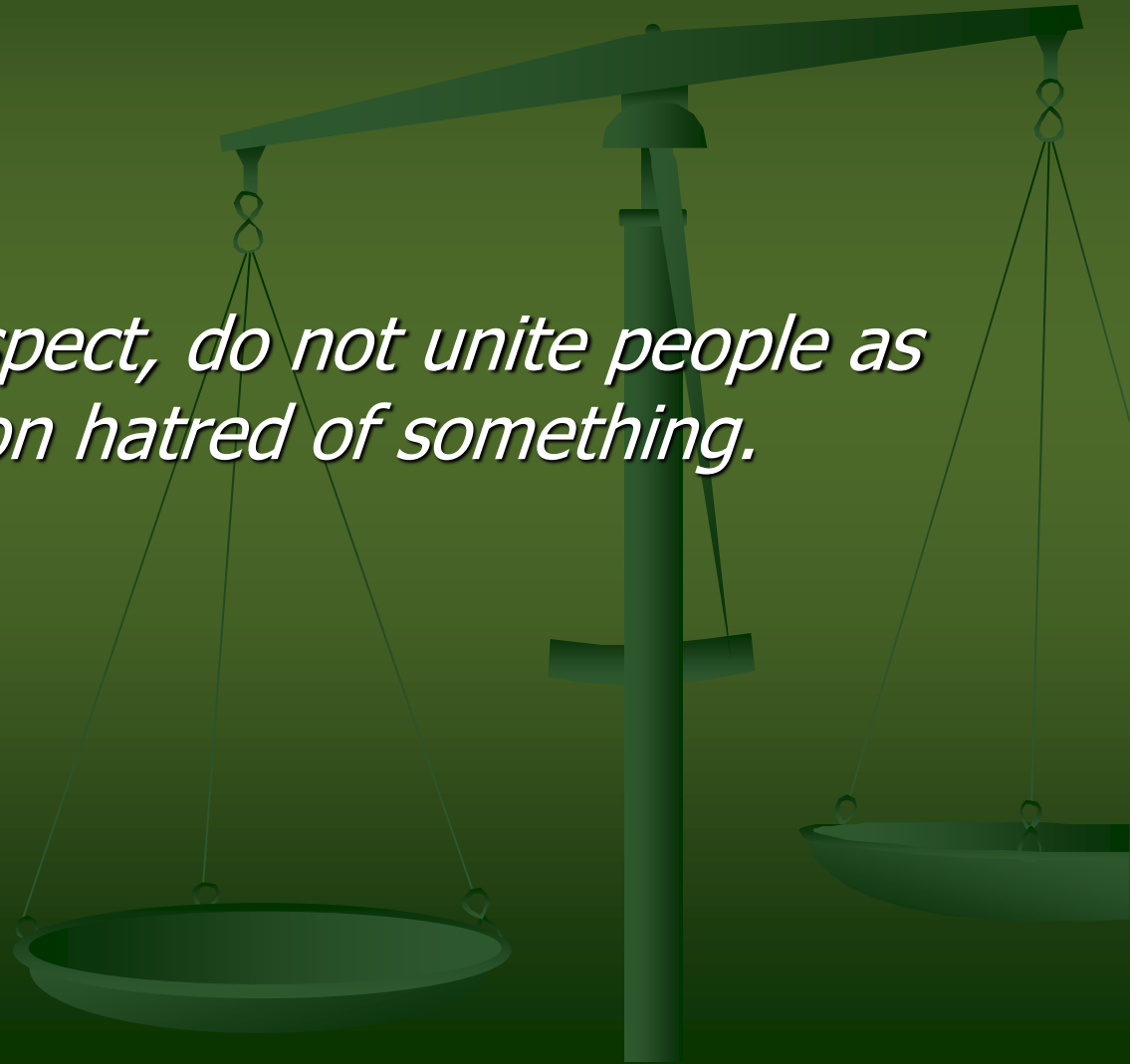
- Zone Change (including SDD)/Regulation Change: Time frames are advisory with respect to legislative acts.
- Other applications: Inferred approval.



# The Hearing

*Love, friendship, respect, do not unite people as much as a common hatred of something.*

- Anton Chekov



# Conduct of Hearing

## ■ Due Process:

- Zoning proceedings "...cannot be so conducted as to violate the fundamental rules of natural justice...."

## ■ Predetermination/Bias:

- Neutrality and impartiality of members are essential to the fair and proper operation of a planning and zoning commission.
- There is a presumption that administrative board members acting in an adjudicative capacity are not biased.
- The burden of proving predetermination is, of course, on the plaintiff.

# Conduct of Hearing, Cont'd

## ■ “The Record”

- Because “fundamental fairness” requires that parties have the opportunity to respond to the evidence being used by their opponents, two principles necessarily fall from that obligation:
  - The members of the agency *must not* consider evidence heard from others *outside* the hearing process.
  - Members of the agency are *not* required to forget everything they know *but* if a member of an agency is going to rely upon personal knowledge, they must afford the applicant and others the opportunity to comment upon that knowledge.
- Exception: Professional/Technical advice from staff, including counsel.

# Post-Decision Process

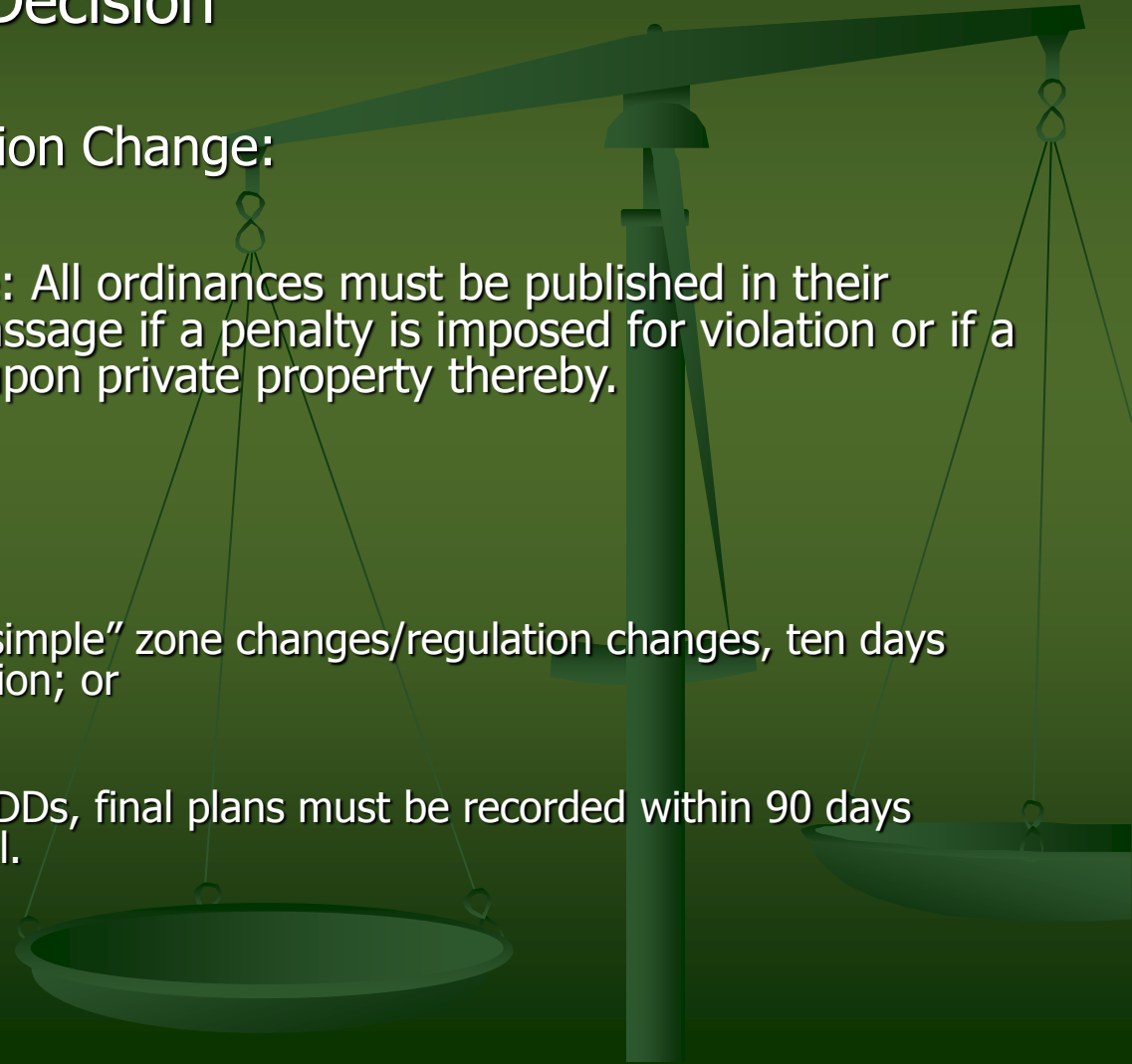
- Notice/Perfection of Decision

- Zone Change/Regulation Change:

- Publication of notice: All ordinances must be published in their entirety following passage if a penalty is imposed for violation or if a burden is imposed upon private property thereby.

- Effective Date:

- With respect to "simple" zone changes/regulation changes, ten days following publication; or
    - With respect to SDDs, final plans must be recorded within 90 days following approval.

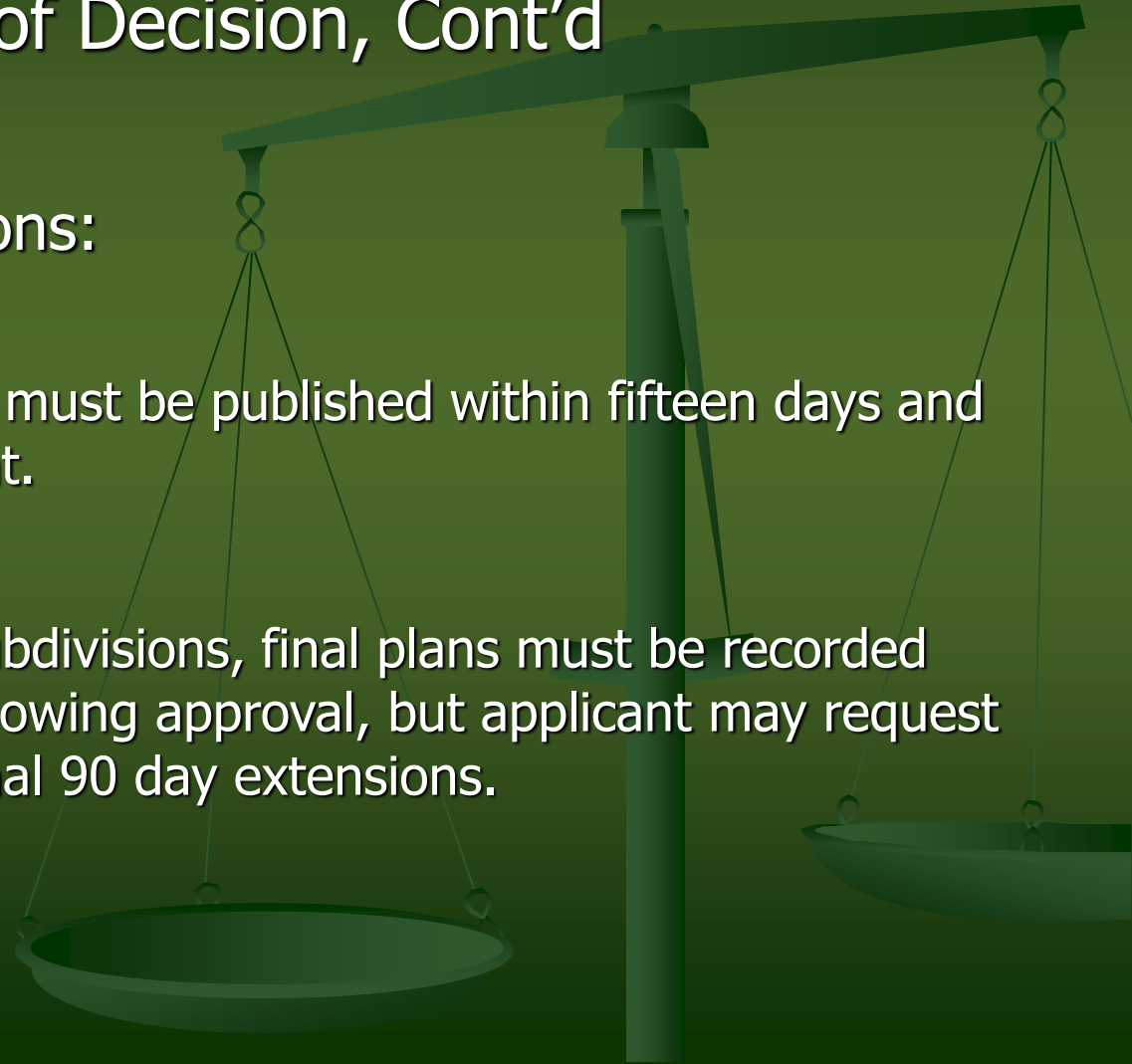


# Post-Decision Process, Cont'd

## ■ Notice/Perfection of Decision, Cont'd

### ■ All other applications:

- Notice of decision must be published within fifteen days and mailed to applicant.
- With respect to subdivisions, final plans must be recorded within 90 days following approval, but applicant may request up to two additional 90 day extensions.

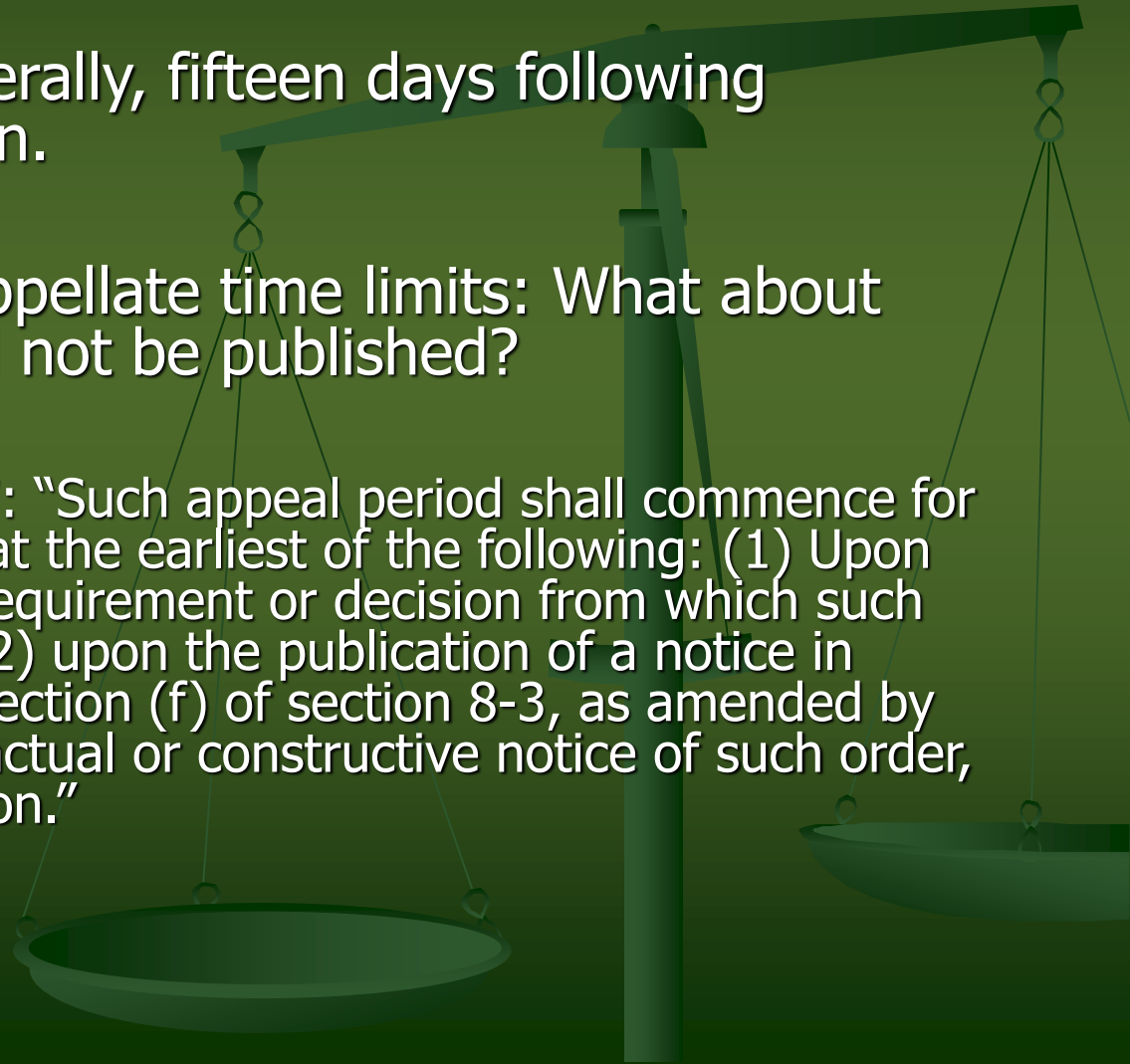


# They're Back Again!!??

- Zone Changes: General Statutes §8-3(c): "No such commission shall be required to hear any petition or petitions relating to the same changes, or substantially the same changes, more than once in a period of *twelve months*."
- Variances: General Statutes §8-6(a): "No such board shall be required to hear any application for the same variance or substantially the same variance for a period of *six months* after a decision by the board or by a court on an earlier such application."
- Subdivisions: General Statutes §8-26: "No planning commission shall be required to consider an application for approval of a subdivision plan *while another application for subdivision of the same or substantially the same parcel is pending* before the commission."

# The Inevitable Appeal

- Time to Appeal: Generally, fifteen days following publication of decision.
- Notice as it affects appellate time limits: What about decisions which need not be published?
  - General Statutes §8-7: "Such appeal period shall commence for an aggrieved person at the earliest of the following: (1) Upon receipt of the order, requirement or decision from which such person may appeal, (2) upon the publication of a notice in accordance with subsection (f) of section 8-3, as amended by this act, or (3) upon actual or constructive notice of such order, requirement or decision."



# Appeals

## ■ Process:

### ■ Trial Court

- Return of Record
- Briefs
- Oral Argument
- Decision

### ■ Certification to Appeal Further



# Post-Approval Issues/Enforcement

- Coordination with other approving agencies
- Monitoring conditions of approval
- Construction problems - Amendments
- Three-year rule. General Statutes §8-13a:

“When a building is so situated on a lot that it violates a zoning regulation of a municipality which prescribes the location of such a building in relation to the boundaries of the lot or when a building is situated on a lot that violates a zoning regulation of a municipality which prescribes the minimum area of the lot, and when such building has been so situated for three years without the institution of an action to enforce such regulation, such building shall be deemed a nonconforming building in relation to such boundaries or to the area of such lot, as the case may be.”

